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August 19, 2019

W.C. Gentry, Esq.
Law Office of W. C. Gentry, P.A.
233 East Bay Street, 8th Floor
Jacksonville, FL 32202
wcgentry@gentrylaw.net

Re: Section 212.055(6), Florida Statutes; General Counsel Binding Legal Opinion

Dear Mr. Gentry:

Thank you for your letter dated August 16, 2019. By way of an immediate response, we have enclosed a courtesy copy of the statement issued by the Office of General Counsel to the City Council and School Board Members on August 16, 2019. As set forth therein, General Counsel Binding Opinion 19-03 remains in full force and effect. Further, consistent with Jacksonville City Council Resolution 2019-598-A, we have requested an official opinion from the Attorney General.

We appreciate that non-lawyers may misunderstand the applicability of the Order entered in *School Board of Clay County, Florida v. Clay County*. As lawyers, we are also sure that you and your colleagues, Messrs. Coxe and Cairns, do not. In that regard, we are confident that you recognize that Judge Whittington's Order addressed six of the seven questions addressed in Opinion 19-03 and, with a single exception, Judge Whittington's Order and Opinion 19-03 are consistent. Of course, the sole exception is that portion of Opinion 19-03 concerning whether the local governing body has discretion to refuse to place a School Capital Surtax on any ballot. Again, while we respect Judge Whittington's comments on that issue, we know (and you know) the issues discussed in Opinion 19-03 were neither briefed nor argued by either party to that action.

Of course, Opinion 19-03 is not the only legal opinion rendered on the subject. You and your colleagues were kind enough to provide us a 15-page memorandum which argued that the City Council possessed no discretion whatsoever and, therefore, had a ministerial duty to call a special election so as

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“to place before the voters of Duval County on November 5, 2019 a referendum regarding assessment of one-half cent Surtax pursuant to Section 212.055(6), Florida Statutes.” To the extent Judge Whittington’s Order, to borrow your phrase, “has debunked” a legal opinion, it is the one you, Mr. Coxe and Mr. Cairns authored on August 16, 2019.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. R. Gabriel". The signature is stylized with a large "J" and a cursive "G".

Jason R. Gabriel
General Counsel

Enclosure

GC-#1300893

Gabriel, Jason

From: Gabriel, Jason
Sent: Friday, August 16, 2019 1:57 PM
To: CM; SS; andersene1@duvalschools.org; juareza1@duvalschools.org; willied@duvalschools.org; jonesw2@duvalschools.org; joycec@duvalschools.org; hershey1@duvalschools.org; grymesc@duvalschools.org; CAUDIT
Cc: Sidman, Margaret (PSidman@coj.net); Johnston, Paige; Phillips, Jon (JPhillips@coj.net); Teal, Jason (JTeal@coj.net); Durden, Stephen (SMDurden@coj.net); Elsbury, Jordan; Krieg, Leeann; Lockhart, Rachel; Hughes, Brian - Mayor's Office; Greene, Diana L. (GreeneD@duvalschools.org); Kimbleton, Nikki; Gabriel, Jason; Croft, James
Subject: OGC Statement regarding recent Clay County Order regarding School Sales Surtax
Attachments: Order.pdf

Dear Honorable Council Members and School Board Members:

An Order has been issued in Clay County rejecting the Clay County School Board's argument that the governing county body's duties are merely ministerial. The Court ruled that the Board of County Commissioners retain discretion with respect to the School Board's proposed referendum. Consequently, the Court denied the School Board's petition for a writ of mandamus.

Judge Whittington's Order is well-reasoned and mostly tracks the logic and rationale regarding county body legislative discretion found in both the previous Attorney General opinion and the Office of General Counsel binding opinion.

For example, the Order cites that "There is nothing in the above-cited text, or in any other portion of the statute, that expressly grants to a school board the authority the [school board] claims it possesses. Such express language simply does not exist."

"The governing body of the county . . . not the school board is tasked with placing the resolution on the referendum ballot."

In making these findings, the Judge aptly cites various other statutes in the law that do expressly authorize the school board — and no other — to ultimately and unilaterally place certain other items on the ballot.

The Court's discussion of ultimate authority by the County to deny placing the sales tax proposal on the ballot was, by the Court's own acknowledgment, not necessary to resolve the disputed issues in the Clay County case, as that aspect was not a part of any argued claims. Therefore, that part of the Order is dicta (a court's extraneous commentary without the benefit of briefing and argument on the specific issues).

Here, the Judge found that the county body has discretion as to when to place the matter on the ballot and further, discretion as to other potential infirmities and flaws in the school board's resolution.

As a reminder, General Counsel Binding Opinion 19-03 addresses a wider range of issues than those framed in the Clay County litigation, and in the context of a significantly different local government structure. General Counsel Binding Opinion 19-03 remains in full force and effect for the Consolidated City of Jacksonville; there is nothing mandating a different conclusion in the Order.

Please do not hesitate to contact me individually with any questions or concerns.

- Jason G.

Jason R. Gabriel

General Counsel

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****Board Certified - City, County & Local Government Law****



***** Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. *****

GC-#1300978 (pdf)